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15 Ventures, Inc. and Steve Vachani

16
                    UNITED STATES DISTRICT COURT
17
                    NORTHERN DISTRICT OF CALIFORNIA
18

19 FACEBOOK, INC.,   Case No. 5:08-cv-05780

20   **DECLARATION OF STEVE**
                                    Plaintiff,   **VACHANI IN SUPPORT OF**
21   **DEFENDANTS' MOTION FOR**
    -against-   **SUMMARY JUDGMENT**
22
    POWER VENTURES, INC. d/b/a POWER.COM, a   Date: September 19, 2011
23 California corporation; POWER VENTURES, INC.   Time: 9:00 a.m.
    a Cayman Island Corporation, STEVE VACHANI,   Judge: Hon. James Ware
24 an individual; DOE 1, d/b/a POWER.COM, an   Courtroom: 5 – 17th Floor
    individual and/or business entity of unknown nature;
25 DOES 2 through 25, inclusive, individuals and/or
    business entities of unknown nature,
26
27   Defendants.

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DECLARATION OF STEVE VACHANI
CASE NO. 5:08-CV-05780

1   I, Steve Vachani, declare:

2   1.   I am CEO of Power.com ("Power"). I make this declaration in support of

3   Defendants' Motion for Summary Judgment. I have personal knowledge of the facts stated herein

4   and, if called as a witness, I could and would competently testify to the truth thereof.

5   2.   In its First Amended Complaint ("complaint"), Facebook accused Power of sending

6   unsolicited email messages to Facebook users that were deceptive and misleading. Power did not

7   send the email messages referenced in the complaint. Facebook sent those messages.

8   3.   Facebook allows its users to create "events," which Facebook then invites friends to

9   attend. Facebook users can create an event using the "Create an Event" screen on Facebook's

10   website. Facebook users can then select which friends should be invited to the events that they

11   create using the "Invite Friends" screen on Facebook's website. After a user has created an event

12   and selected his or her friends to be invited, Facebook sends the invitations by email. The screen

13   captures in our accompanying memorandum of law are true and correct representations of the

14   screens used in Facebook's event creation process, and an email invitation initiated by Facebook

15   through the event creation process.

16   4.   Power did not send the email messages referenced in the complaint. Facebook did.

17   Facebook solely determined the content of the "From:" field, and it supplied the closing signature

18   from "The Facebook Team." Neither the user nor Power has any control over these elements of the

19   email message.

20   5.   All of the content in these email messages that Facebook alleges to be misleading

21   and false was written and appended to the message by Facebook itself. In fact, Facebook appends

22   that very same text to every email communication it sends after an event is created. Even if the

23   "From:" field and closing signature were misleading in any way, Power had no control over them.

24   6.   The specific email referenced in the complaint was generated by Facebook as a

25   result of a Facebook user named "Nik" creating an event and selecting the friends to invite. It was

26   Nik, not Power, that logged on to Facebook and created the event. It was Nik, not Power, that

27   chose the friends he wished to invite. Nik could only send the invitation to other Facebook

28   members who had agreed to "friend" Nik, and thus had expressly agreed to receive

DECLARATION OF STEVE VACHANI   1
 CASE NO. 5:08-CV-05780

1   communications from Nik. Facebook then sent an email to those friends on Nik's behalf. Power

2   did not initiate this message. Power did not select the recipients to whom it was sent. And Power

3   had no control over the content of the message or the header information. Only Facebook did.

4   Facebook itself transmitted the message and the header information is accurate.

5   7.   Power had no control over the return electronic mail address. Only Facebook did.

6   And Power had no ability to include any opt-out mechanism in the message. It was Facebook, and

7   Facebook alone, that determined whether to include an opt-out mechanism in the message.

8   8.   Like Facebook, Power also has not received a single complaint from a Facebook

9   user about any of the events in Facebook's complaint. No one complained to Power about the

10   emails referenced in ¶ 92 of Facebook's complaint. Nor has anyone complained to Power about

11   any of our activities related to Facebook. Nor has anyone claimed to have been misled by anything

12   we did.

13   9.   Power did not transmit any email message to any Facebook account. Nor did Power

14   make available any utility that would enable a user to transmit such messages.

15   10.   Power did not access any nonpublic portion of Facebook's website. Power merely

16   offered users a different and potentially superior browser through which they could access their

17   Facebook accounts to copy, update, and/or port their own "User Content." And users did so by

18   entering their own valid usernames and passwords, which Power never copied or stored for any

19   purpose. Furthermore, Power did not obtain any software, data, or other content of value from

20   Facebook. The only data accessed through Power's utilities were user's own "User Content," over

21   which Facebook has disclaimed any ownership.

22   11.   At some time during December 2008, Facebook began blocking one of the IP

23   addresses Power had used. Power did not undertake any effort to circumvent that block, and did

24   not provide users with any tools designed to circumvent it. Nevertheless, Facebook's IP block was

25   ineffective because it blocked only one outdated IP address Power had used, and did not block

26   other IPs that Power was using in the normal course of business. After the blocking, Power

27   undertook efforts to implement Facebook Connect as Facebook had requested.

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DECLARATION OF STEVE VACHANI   2
CASE NO. 5:08-CV-05780

1   12.   When negotiations with Facebook over the implementation of Facebook Connect

2 broke down, Power turned off our Facebook integration completely. We did not circumvent any

3 technical barriers. And we voluntarily turned off the integration even though Facebook's IP

4 blocking attack was partial, incomplete, and ineffective.

5   13.   The only intended use and the only actual use of the Power browser was to display

6 the user's own Facebook account and to enable the user to copy and/or update the user's own

7 "User Content." We had no scheme to defraud, deceive or extort anyone. Nor could the Power

8 browser be used for such a scheme. Nor, to my knowledge, was the Power browser used for such a

9 scheme.

10   I declare under the penalty of perjury under the laws of the State of California that the

11 foregoing is true and correct, and that this Declaration was executed at Rio de Janeiro, Brazil this

12 6th day of May, 2011.

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14   _____

15   Steve Vachani

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DECLARATION OF STEVE VACHANI
CASE NO. 5:08-CV-05780

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